

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly determined that appellant was not entitled to augmented schedule award compensation based on claiming her minor grandchild, of whom she had legal custody, as a dependent pursuant to 5 U.S.C. § 8110.

FACTUAL HISTORY

On August 21, 2018 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she suffered a left wrist injury when falling after being chased by a dog while in the performance of duty. She initially stopped work on August 21, 2018.

On September 6, 2018 OWCP accepted appellant's claim for left wrist and hand sprain. On October 25, 2018 it expanded acceptance of the claim to include left wrist de Quervain's tenosynovitis. OWCP paid appellant wage-loss compensation on the supplemental rolls, effective October 6, 2018.

Appellant underwent OWCP-authorized de Quervain's left wrist release on December 11, 2018.

On February 14, 2020 appellant filed a claim for compensation (Form CA-7) for a schedule award.

In a March 2, 2020 report, Dr. Sami Moufawad, a Board-certified specialist in physical medicine and rehabilitation, reviewed appellant's history of injury and medical record. He examined appellant and performed range of motion (ROM) testing, repeating his measurements three times after warm up. Utilizing the ROM method of the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),³ Dr. Moufawad noted that appellant's left wrist demonstrated 45 degrees, 50 degrees, and 50 degrees of extension, which corresponded to three percent permanent impairment of the upper extremity under Table 15-32, page 473. He indicated that her left wrist demonstrated 45 degrees, 45 degrees, and 50 degrees of flexion, which corresponded to three percent permanent impairment of the upper extremity. Dr. Moufawad reported that appellant's left wrist demonstrated 5 degrees, 8 degrees, and 10 degrees of radial deviation, which corresponded to two percent permanent impairment of the upper extremity. He noted that her left wrist demonstrated 15 degrees, 20 degrees, and 20 degrees of ulnar deviation, which corresponded to two percent permanent impairment of the upper extremity. Dr. Moufawad calculated that appellant had 10 percent permanent impairment of the left upper extremity and opined that she had reached maximum medical improvement (MMI) on March 2, 2020. Utilizing the diagnosis-based impairment (DBI) method of the A.M.A., *Guides*, he identified the class of diagnosis (CDX) as a class 1 impairment for the diagnosis of wrist sprain. Dr. Moufawad assigned a grade modifier for functional history (GMFH) of 0, in accordance with Table 15-7, page 406. He noted that a grade modifier for physical examination (GMPE) could not be used as physical examination was used to choose the CDX. Dr. Moufawad reported a grade modifier for clinical studies (GMCS) of 1, in accordance

³ A.M.A., *Guides* (6th ed. 2009).

with Table 15-9, page 410, based on appellant's magnetic resonance imaging (MRI) scan findings. Utilizing the net adjustment formula, he calculated that appellant had a net adjustment of -1, resulting in movement from the default class of C to B and corresponding to four percent permanent impairment of the left upper extremity. Dr. Moufawad concluded that the ROM method should be used in this particular case to determine appellant's impairment because it yielded 10 percent permanent impairment of the left upper extremity, which was higher than the rating from the DBI method.

On April 2, 2020 OWCP referred appellant's case for a schedule award impairment rating with Dr. Morley Slutsky, a Board-certified specialist in occupational medicine serving as a district medical adviser (DMA). In an April 11, 2020 report, Dr. Slutsky reviewed the medical record. He noted that he was not provided with the diagnostic tests, left wrist surgery note, and medical notes referenced in Dr. Moufawad's March 2, 2020 report. Dr. Slutsky concurred with Dr. Moufawad's impairment ratings using the ROM and DBI methods of the sixth edition of the A.M.A., *Guides*. He therefore found that appellant had 10 percent permanent impairment of the left upper extremity and opined that she had reached MMI on March 2, 2020.

By decision dated May 4, 2020, OWCP granted appellant a schedule award for 10 percent permanent impairment of the left upper extremity. The period of the award ran for 31.20 weeks from March 2 through October 6, 2020. The schedule award compensation rate was 662/3 percent.

On May 12, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant submitted a May 3, 2016 court order, which showed that she was granted legal custody of her granddaughter.

A telephonic hearing was held on August 7, 2020. During the hearing, counsel clarified that the schedule award determination was not in question. He argued that appellant was entitled to augmented schedule award compensation as she had legal custody of her granddaughter who she declared as a dependent. Appellant testified that she had sole legal custody of her granddaughter and that she lived with her full time.

Appellant submitted her tax returns from 2017 through 2019, in which she listed her granddaughter as a dependent.

By decision dated October 1, 2020, OWCP's hearing representative affirmed the May 4, 2020 decision, finding that appellant's legal custody of her granddaughter did not entitle her to augmented schedule award compensation.

LEGAL PRECEDENT

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty.⁴ If the disability is total, the United States shall pay the employee during the disability monthly monetary

⁴ 5 U.S.C. § 8102(a); *see also* A.W., Docket No. 19-0832 (issued September 24, 2019).

compensation equal to 66 2/3 percent of his or her monthly pay, which is known as basic compensation for total disability.⁵ Under section 8110 of FECA, an employee is entitled to compensation at the augmented rate of eight and one-third of his or her weekly pay for a total of 75 percent of monthly pay, if he or she has one or more dependents.⁶ OWCP's procedures provide that the maximum compensation rates for disability compensation also apply to schedule award compensation.⁷

A dependent includes an unmarried child who, while living with the employee or receiving regular contributions from the employee toward his or her support, is either under 18 years of age or over 18 years of age and incapable of self-support due to physical or mental disability.⁸ A child is also considered a dependent if he or she is an unmarried student under 23 years of age who has not completed four years of education beyond the high school level and is currently pursuing a full-time course of study at a qualifying college, university, or training program.⁹

ANALYSIS

The Board finds that OWCP properly determined that appellant was not entitled to augmented schedule award compensation based on claiming her minor grandchild, of whom she had legal custody, as a dependent pursuant to 5 U.S.C. § 8110.

By decision dated October 1, 2020, OWCP found that appellant was not entitled to augmented schedule award compensation as there was no provision under FECA for her granddaughter to be considered as a dependent.

The Board has held that FECA includes stepchildren, adopted children, and posthumous children, but does not include grandchildren in the definition of dependents for purposes of augmented compensation.¹⁰ Although appellant obtained legal custody of her minor granddaughter in 2016, there is no evidence of record that she adopted her. A grandchild is not one of the specifically enumerated dependents for purposes of receiving augmented

⁵ *Id.* at § 8105(a).

⁶ *Id.* at § 8110.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7g (February 2013); *R.M.*, Docket No. 19-0463 (issued March 1, 2021); *G.J.*, Docket No. 18-1292 (issued March 13, 2019).

⁸ 5 U.S.C. § 8110(a).

⁹ *E.B.*, Docket No. 19-1571 (issued December 31, 2020); *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *E.G.*, 59 ECAB 599, 603 n.10 (2008).

¹⁰ *See M.G.*, Docket No. 09-1511 (issued March 24, 2010); *Barbara J. Hill*, 50 ECAB 358 (1999); *Louis L. Jackson*, 39 ECAB 423 (1988) (where the Board noted that, while Congress allowed grandchildren as a class of persons eligible for death benefits under section 8133, it did not include a grandchild in the definition of dependents for purposes of augmented compensation under section 8110).

compensation.¹¹ Furthermore, guardianship or legal custody by itself does not establish dependency.¹² Accordingly, appellant's granddaughter is not an eligible dependent under FECA.¹³ The Board, therefore, finds that appellant is not eligible for augmented schedule award compensation based on claiming her granddaughter as a dependent.

CONCLUSION

The Board finds that OWCP properly determined that appellant was not entitled to augmented schedule award compensation based on claiming her minor grandchild, of whom she had legal custody, as a dependent pursuant to 5 U.S.C. § 8110.

ORDER

IT IS HEREBY ORDERED THAT the October 1, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 9, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹¹ 5 U.S.C. § 8101(9). FECA separately defines grandchild for purposes of identifying eligible beneficiaries to certain death benefits under 5 U.S.C. §§ 8109 and 8133. *Id.* at § 8101(10).

¹² See *R.P.*, Docket No. 14-0771 (issued October 1, 2014).

¹³ 5 U.S.C. § 8101(9).